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SENATE BILL 3337 By
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HOUSE BILL 3355
By Head

AN ACT to authorize an adequate facilities tax in Montgomery
County, Tennessee.

WHEREAS, Montgomery County, Tennessee, has experienced rapid growth in its
population and in demand for county-provided capital facilities; and

WHEREAS, the county's present revenue-raising authority is limited and relies heavily
on intergovernmental transfers, which are not subject to county control, and on property taxes,
which would impose the costs of new growth on existing residents rather than on new residents
and businesses creating the demand for the additional expenditures; and

WHEREAS, Montgomery County is committed to both present and future county
residents to maintaining a level of public facilities and services commensurate with those
presently provided; and

WHEREAS, Montgomery County is prepared to impose a fair, equitable and
reasonable share of the costs of providing the necessary public facilities and services on
existing residents of the county; and

WHEREAS, the county's present population, employment base, tax base and budget cannot alone support the additional revenues needed to supply facilities to serve new growth without a substantial increase in the property tax rate on existing development; and

WHEREAS, the continued expansion of the county's population and residential and nonresidential development represents both an extraordinary economic opportunity for the State of Tennessee as well as a potential economic burden on the existing residents of Montgomery County; and

WHEREAS, due to these unique circumstances, it is necessary and appropriate that Montgomery County be given authorization to extend its taxing power to enable the county to impose a fair and reasonable share of the costs of public facilities necessitated by new development on that development so as not to create an unfair and inequitable burden on existing county residents; and

WHEREAS, there is precedent in the State of Tennessee for such additional tax measures to impose costs on those who benefit from improvements and where the result would otherwise be to impose an unfair burden on existing residents; and

WHEREAS, the most logical and effective mechanism to accomplish the intended result would be the imposition of a new privilege tax on new development in Montgomery County and to use the revenues from such tax to provide the needed public facilities in those areas of Montgomery County that would generally be required due to the growth in that area; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This Act shall be known and may be cited as the "Montgomery County Adequate Facilities Tax".

SECTION 2. As used in this act, unless a different meaning appears from the context:

(1) "Board of Construction Appeals" means the board established in Montgomery County pursuant to the requirements of the Southern Building Code Congress International.

(2) "Building" means any structure, including a mobile home, built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind.

(3) "Building Permit" means a permit for development issued in Montgomery County, whether by the county or by any city therein.

(4) "Cost" means the structural, electrical, plumbing, mechanical, interior finish, normal site preparation (excavation and backfill for building), architectural and design fees, overhead and profit.

(5) "Development" means the construction, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or the addition to any building or structure, or any part thereof, for which the projected cost or value exceeds twenty-five thousand dollars (\$25,000).

(6) "Dwelling Unit" means a room, or rooms connected constituting a separate, independent housekeeping establishment for owner occupancy, rental or lease on a daily, weekly, monthly, or longer basis; physically separated from any other room(s) or dwelling unit(s) which may be in the same structure; and containing independent cooking and sleeping facilities.

(7) "Governing Body" means the Board of County Commissioners of Montgomery County, Tennessee.

(8) "Person" means any individual, firm, co-partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number.

(9) "Place of worship" means that portion of a building, owned by a religious institution, which has tax-exempt status, which is used for worship services and related functions; provided, however, that a place of worship does not include buildings or portions of buildings which are used for purposes other than for worship and related functions or which are intended to be leased, rented or used by persons who do not have tax-exempt status.

(10) "Projected Value" means the estimated sales or market value based on comparable sales of the same or equivalent type of construction and based on the location less the cost of land and closing cost.

(11) "Public Facility or Facilities" means a physical improvement undertaken by the county or city, including, but not limited to, the following: roads and bridges, parks and recreational facilities, jails and law enforcement facilities, schools, libraries, government buildings, fire stations, sanitary landfills, water, waste water and drainage projects, airport facilities and other governmental capital improvements benefiting the citizens of the county or city(ies).

(12) "Residential Building" means the development of any property for a dwelling unit(s) or any structure, including a mobile home, built for the support, shelter, or enclosure of persons, chattels, or movable property of any kind.

SECTION 3. It is the intent and purpose of this act to impose a tax on new development in Montgomery County, payable at the time of the issuance of a building permit so as to ensure and require that the persons responsible for the new development share in the burdens of growth by paying their fair share for the cost of new and expanded public facilities made necessary by such development.

SECTION 4. Engaging in the act of development within Montgomery County, except as provided in Section 6 herein, is declared to be a privilege upon which Montgomery County may levy a tax at the rate set forth in Section 7.

SECTION 5. The governing body may, by resolution, adopt administrative guidelines, procedures, regulations and forms necessary to properly implement, administer and enforce the provisions of this act.

SECTION 6. This act shall not apply to development of:

- (1) Nonresidential facilities;
- (2) Places of worship;
- (3) Barns or outbuildings used for agricultural purposes;
- (4) Replacement structures for previously existing structures destroyed by fire or other disaster; or
- (5) A structure owned by a nonprofit corporation which is a qualified 501 (c)(3) corporation under the Internal Revenue Code.

SECTION 7. (a) There is hereby imposed a tax on new development as follows: to the greater of projected value or cost of the proposed development shall be applied a tax rate equal to the effective property tax rate most recently adopted by the county governing body.

(b) As used in this section, "effective property tax rate" means the rate per one hundred dollars (\$100) of assessed value as levied by the county governing body, multiplied by twenty five percent (25%) and multiplied further by the appraisal ratio for the county as determined by the state board of equalization.

SECTION 8. Proceeds from the tax levied herein shall be applied to capital projects or the related debt service for new school construction for projects situated generally in the areas of growth due to the construction of dwelling units in such areas.

SECTION 9. The tax established in this act shall be collected at the time of application for a building permit for development, as herein defined, by a county official duly authorized by the county executive. If the building permit is issued by the county, the county building official or other responsible official shall receive payment in full in cash or other negotiable instrument as specified by resolution of the county and as approved by the county attorney. If the building

permit is issued by one of the incorporated cities of Montgomery County, the city shall, before issuance of the building permit, require evidence by a valid certificate executed by the county building inspector that the full amount of the tax due the county has been paid. The issuance of a building permit by any city official, without certificate from the county that the tax has been paid, shall render the city liable to the county for the sum that would have been collected by the county had the certificate of tax paid been required by the city.

SECTION 10. The authority to impose this privilege tax on new development in Montgomery County is in addition to all other authority to impose taxes, fees, assessments, or other revenue-raising or land development regulatory measures granted either by the private or public acts of the state of Tennessee, and the imposition of such tax, in addition to any other authorized tax, fee, assessment or charge, shall not be deemed to constitute double taxation.

SECTION 11. (a) Any person aggrieved by the decision of the county building official or other responsible official concerning any aspect of this act may obtain review of the official's decision in the following manner:

(1) By payment of the disputed amount to Montgomery County and by notifying the official that the payment is made under protest; and

(2) By requesting an appeal of the decision of the official in written form within thirty (30) days of the protest and payment. Appeals shall be heard by the Montgomery County Board of Construction Appeals. A hearing shall be scheduled within forty-five (45) days of the written request for appeal.

(b) The Board of Construction Appeals shall render a decision on all hearings within thirty (30) days of the hearing date, unless the hearing is continued from time to time by a majority vote of the board for further information.

(c) The Board of Construction Appeals shall act as a quasi-judicial body whose purpose is to determine the intent of this act, its applicability to the

appellant, and to rule upon the interpretation of the official. The board shall not be bound by formal rules of evidence applicable to the various courts of the state.

(d) Hearings before the board shall proceed as follows:

(1) The county building official shall explain his ruling and the reasons for his ruling.

(2) The appellant shall explain his reasons for protesting the ruling.

(3) The board may request further information from any county official, including, but not limited to, the county executive, county commissioners, or committee members, the county attorney, or the county planning staff. The board shall not have the power of subpoena.

(4) The board shall deliberate and render a decision by a majority vote. Decisions shall be reduced to writing and copies shall be sent to all parties and shall become a part of the minutes of the board. Decisions of the Board of Construction Appeals shall be final, except that either the county building official, or the person aggrieved may seek review of the board's actions by certiorari and supersedeas to the Chancery Court of Montgomery County, Tennessee, provided that an application to the court is made within sixty (60) days of the written decision of the board.

SECTION 12. The provisions of this act shall in no manner repeal, modify or interfere with the authority granted by any other public or private law applicable to Montgomery County. This act shall be deemed to create an additional and alternative method for Montgomery County to impose and collect taxes for the purpose of providing public facilities.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the county legislative body of Montgomery County. Its approval or nonapproval shall be proclaimed by the presiding officer of the county legislative body and certified by such officer to the secretary of state.

SECTION 15. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, it shall become effective as provided in Section 14.